IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6568 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTLAL PRABHUDAS MOTAVAR

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

MR M.A.BUKHARI FOR MR SP HASURKAR for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 16/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside an order passed by the Deputy Police Commissioner, Vadodara on 4th March, 1989 removing the

petitioner from service, which was confirmed by the Police Commissioner, Vadodara on 30th June, 1989.

The case of the petitioner was that he was appointed as a police constable in 1982. He has stated that though he was discharging his duties since the date of his appointment to the utmost satisfaction of the department, a charge sheet came to be issued to him on 30th November 1987 inter alia alleging that on 25th May, 1986 at about 23.10 hours, he was found drunk at Vankar Vas, at village Varnama. A departmental inquiry was instituted against the petitioner wherein he was found guilty. Disciplinary authority passed an order of removal which was confirmed by the appellate authority. Against the said order, the present petition is filed. It was admitted but interim relief was refused. The matter is called out for final hearing today.

It is submitted that the order was passed by the first authority which was challenged in appeal and the appellate authority confirmed the said order. Section 25 of the Bombay Police Act, 1951 (hereinafter referred to as `the Act') provides for imposition of penalty by the disciplinary authority. Section 27 provides an appeal. In the instant case, the appeal came to be dismissed. Section 27A as inserted by the Bombay Police (Gujarat Amendment) Act, 1978 (Act 16 of 1978) provides a revision before the State Government, Inspector General of Police or Deputy Inspector General of Police, as the case may be. In the instant case, after the order passed by the appellate authority, the petitioner has directly approached this Court by filing this petition.

Several contentions were raised by Mr. D.M.Thakker for the petitioner. He submitted that no criminal case was filed against the petitioner and hence , it cannot be said that the petitioner had consumed alcohol. He further submitted that as per medical report, the petitioner was not under the influence of alcohol and hence, the authorities have committed an error of law in holding that the petitioner had consumed alcohol. He also submitted that the incident was of May 25, 1986, but the charge sheet was issued as late as on 30th November, 1987. Thus, there was inordinate delay on the part of the authorities in initiating proceedings which had prejudicially affected the defence of the petitioner. It was also stated that the petitioner was not on duty at the relevant time and in the past also, no such incident had taken place.

In my opinion, however, when a remedy by way of revision

is available to the petitioner before the State Government, it would be in the interest of justice if the petitioner is granted liberty to invoke revisional jurisdiction of the authorities under Section 27-A of the Act. Since the petitioner had approached this Court by invoking provisions of Article 226 immediately after the order was passed by the appellate authority and there was no delay on his part, it would be in the interest of justice if the petitioner is granted some time to invoke revisional jurisdiction of the State Government.

In the facts and circumstances, it is directed that if the petitioner will file a revision application on or before May 1, 2000, the revisional authority will entertain the same without raising any objection as to limitation and decide the same on its own merits.

For the foregoing reasons, in my opinion, petition deserves to be disposed of by giving liberty to the petitioner to approach the revisional authority , if latest by May 1, 2000, such revision is filed. I may state that since I am disposing the petition only on the ground of availability of alternative remedy , I am not expressing any opinion on the merits of the matter and as and when, revision application is filed, the revisional authority will decide the same in accordance with law without being inhibited by any observations made by me hereinabove. Rule is made absolute to the aforesaid extent. No order as to cost.

--
parekh